

1 **STATE OF CALIFORNIA**
2 **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**
3 **DEPARTMENT OF CORPORATIONS**

4
5 **RE: Graybar Electric Company, Inc.**

File Number: 506-3244

6 34 North Meramec Avenue

7 St. Louis, MO 63105
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10 **CONSENT ORDER**

11 **(For violations of section 25110 of the California Corporations Code)**
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14 Without admitting or denying the findings herein, except as to the jurisdiction of the
15 Department of Corporations (Department) over it and the subject matter of these transactions for the
16 times in question, which are admitted, Respondent Graybar Electric Company, Inc. (Graybar)
17 consents to the entry of this Consent Order made pursuant to California Corporations Code Section
18 (CSL) 25110.

19 Summary

20 Graybar, a St. Louis, Missouri employee-owned corporation, on at least seventeen (17)
21 occasions since 1959, including 2004 and 2005, offered and/or sold securities in California without
22 obtaining a permit or availing itself of an exemption in compliance with CSL §25110 and its
23 predecessor statutes (incorporated by reference).

24 Graybar's California employees were sold stock under Common Stock Purchase Plans and
25 voting trust certificates that have been issued under successive voting trust agreements without the
26 consent or knowledge of the Department. By selling securities without qualifying or exempting the
27 offering the Department contends that Graybar violated the securities qualification provisions of CSL
28 §25110.

California Corporate Securities Law

CSL §25110 provides that it is unlawful to offer or sell securities in California (in an issuer transaction) unless such sale has been qualified or exempted. Graybar has acknowledged that on at least seventeen (17) occasions since 1959, including 2004 and 2005, securities have been offered in California without a permit.

CSL §25532 provides that if a security that is subject to qualification under the CSL has been offered or sold without first being qualified, the California Corporations Commissioner (Commissioner) may order the issuer of said security to desist and refrain from the further sale of the security until such sale is qualified under the law.

CSL §25535 provides that a violator of §25110 shall be liable for a civil penalty up to twenty-five thousand dollars (\$25,000) per violation in an action brought by the Commissioner in the name of the people of California in any court of competent jurisdiction. The action must be brought within four (4) years of the violation.

Findings

Graybar is based in St. Louis, Missouri and was founded in 1925. It is an employee-owned corporation. The company is engaged in the distribution of electrical, telecommunications and networking products and the provision of related supply chain management and logistical services to contractors, industrial plants, telecommunications companies, state and federal government agencies and commercial users. The company operates nationwide. It had 2005 sales of \$4,288,043,000 and income of \$16,764,000. The company has operated in California since 1925 and currently has twenty-two (22) facilities throughout the state.

Graybar is 100% owned by current and retired employees and their estates for the one-year period after death. As of July 2006, there were 5,865,153 shares of Common Stock outstanding. Approximately 95% of this outstanding stock is held of record by five voting trustees under a Voting Trust Agreement, effective as of April 1, 1997. The original trust was established in 1928 and the arrangement has been continued by the company with the adoption of successive ten year voting trust agreements (the current trust expires in 2007). The voting trust is a contract between the participating

1 stockholders and the voting trustees pursuant to which the stockholders deposit stock in the voting
2 trust and receive in exchange voting trust certificates, which are securities under the CSL. Pursuant
3 to the voting trust agreement, the voting trustees must be company employees. The five current
4 trustees are directors of the company and also hold senior management positions.

5 Graybar employees acquire stock through employee Common Stock purchase plans (purchase
6 plan). The stock is deposited into a voting trust, and voting trust certificates are issued to the
7 subscribers in exchange. Every voting trust certificate issued under the Voting Trust Agreement is
8 subject to the same terms and conditions as the Common Stock. The company's current stock
9 purchase plan commenced in 2004 and will terminate in 2006. The stock has a price of \$20.00 and
10 since 1961 has paid a cash dividend of (at least) \$2.00 per year or 10%. Common Stock issued
11 pursuant to the purchase plan(s) is subject to a repurchase right/right of first refusal which gives
12 Graybar a thirty day option to buy back the stock at the original purchase price of \$20.00 per share if
13 an employee or his/her estate wants to sell, transfer or otherwise dispose of his/her shares. The
14 company has always exercised this right.

15 Graybar has offered and sold stock and voting trust certificates that have been issued in
16 respect thereof to its employees in California from at least 1959 through and including 2001 as well
17 as 2004 and 2005 for a total of least seventeen offerings. In 2004 the company issued 18,957 shares
18 of Common Stock (valued at \$379,140) to 261 California employees. In 2005 it issued 27,962 shares
19 (valued at \$559,240) to 279 California employees. The company has acknowledged that none of
20 these offering were qualified under the CSL.

21 On September 18, 2006, Graybar filed an application for qualification of its 2006 employee
22 plan with the Department. The offering sought to qualify 69,719 shares of Common Stock valued at
23 \$1,394,380. Upon review of the application the Department became aware of possible previous
24 issuances of securities by Graybar that had not been qualified or exempted in conformance with the
25 CSL. In response to the Department's inquiries, Graybar disclosed that the previous issuances had
26 not been qualified.

27 Based upon the foregoing findings, the California Corporations Commissioner concludes that
28 Graybar offered or sold securities without being qualified in violation of CSL §25110 from at least

1 1959 through and including 2001 as well as 2004 and 2005. Graybar neither admits nor denies the
2 foregoing findings.

3 Pursuant to CSL §25532 Graybar is hereby ordered, and Graybar agrees, to desist and refrain
4 from the further offer or sale in the State of California of securities, unless and until qualification has
5 been made under the law, or unless the transaction or the security is otherwise exempt. This Order is
6 necessary, in the public interest, for the protection of investors and consistent with the purposes,
7 policies, and provisions of the Corporate Securities Law of 1968.

8 In lieu of the of sanctions prescribed by CSL §25535 Graybar agrees to the following fees,
9 penalties and sanctions:

- 10 1. Graybar will pay the Department the maximum fee of \$2,500.00, pursuant to CSL §25608(f),
11 for each of its offerings of Common Stock in 2004 and 2005, for a total payment of
12 \$5,000.00.
 - 13 2. Graybar will pay the Department a penalty of \$20,000 per violation for its failure to qualify
14 the offerings of securities in 2004 and 2005 for a total penalty of \$40,000. This penalty
15 reflects consideration of Graybar's violations extending back at least forty-five (45) years.
 - 16 3. Graybar consents to a mandatory obligation to repurchase the Common Stock issued to its
17 California employees in 2004 and 2005 if said employees wish to sell their stock prior to
18 December 31, 2007.
 - 19 4. Graybar will communicate the substance and circumstances of this Consent Order to its
20 California employees.
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1 In consideration of this Consent Order, Graybar waives its right to a hearing on this matter
2 and to judicial review of this matter pursuant to California Code of Civil Procedure Section 1094.5.
3 This Consent Order is a public document and will be posted on the web site of the Department of
4 Corporations.

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6 Dated: October

7 St. Louis, Missouri

8 Graybar Electric Company, Inc.

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10 By: **ORIGINAL SIGNED BY**
11 Thomas F. Dowd
12 Senior Vice President, Secretary
13 and General Counsel
14

15 Dated:

16 OCT 24 2006
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PRESTON DuFAUCHARD
California Corporations Commissioner

By: **ORIGINAL SIGNED BY**
W. Anthony Colbert
Senior Corporations Counsel
Securities Regulation Division